

ceste annualment a tel test, &c.
 cest confirmation est voide, p ceo
 q il reserba a luy un novel chose
 que ne fust parcel de ses services
 devant le confirmation, & issint le
 Seignior post bien p tiel confirma-
 tion abridger les services p queux
 le tenant tient de luy, mes il ne
 post reserver a luy novel services.

such a Fealt, &c. This Confirmation
 is void; because he reserveth
 him a new Thing which was no
 Parcel of his Services before the
 Confirmation: And so the Lord may
 well by such Confirmation abridge
 the Services by which the Tenant
 holdeth of him, but he cannot
 serve to him new Services.

This upon that which hath been said before in the next preceding Section is evident
 and needeth no further Explication.

Sect. 540.

Item si soit Seignior, mesne,
 & tenant, & le tenant est un
 Abbe, q tient de mesne p certain
 services annualment, le quel nad
 aucun cause d'aver acquittance en-
 vers son mesne pur porter brief
 de Mesne, &c. en cest cas, si le
 mesne confirma l'estate que l'Abbe
 ad en la terre, a aver & tener le
 terre a luy & a ses successors en
 Frankalmoigne, &c. en cest cas le
 confirmation est bone, & adon-
 ques l'Abbe tiendra de le mesne en
 Frankalmoigne. Et la cause est
 p ceo que nul novel service est
 reserve, car tous les services
 especialment specifies sont extindz,
 & nul rent est reserve al mesne
 forsque que l'Abbe tient de luy
 la terre, & ceo fist il devant la
 confirmation, car celui que tient
 en Frankalmoigne, ne doit faire
 aucun corporal service, issint que
 p tiel confirmation il appert
 que le mesne ne reserba a luy
 aucun novel services, mes q les
 tenemens seront tenus de luy

Also if there be Lord, Mesne
 and Tenant, and the Tenant
 an Abbot that holdeth of the Mesne
 by certain Services yearly, the
 which hath no Cause to have Ac-
 quittance against his Mesne for
 bringing a Writ of Mesne, &c. in the
 Case, if the Mesne confirm the
 Estate that the Abbot hath in the
 Land, to have and to hold the Land
 unto him and his Successors in Frank-
 almoigne, or Free-alms, &c. in the
 Case this Confirmation is good, and
 then the Abbot holdeth of the
 Mesne in Frankalmoigne: And the
 Cause is, for that no new Service is
 reserved, for all the Services spe-
 cially specified be extinct, and no
 Rent is reserved to the Mesne, but
 the Abbot shall hold the Land of
 him as it was before the Confirma-
 tion; for he that holdeth in Frank-
 almoigne ought to do no bodily Ser-
 vice; so that by such Confirmation
 it appeareth the Mesne shall not
 reserve unto him any new Service
 but that the Land shall be holde
 of him as it was before, and in the

G.P. 2856

G A N
E S S A Y

ON THE



R E G U L A T I O N
O F T H E
P R E S S .

L O N D O N ,

Printed in the Year, 1704.

G. Pamph. 2856

Some Persons think that laying a Tax upon Printed News, may be of Service; but in my Opinion, it will only give Encouragement to the News Writers to vent their own Opinions thro'out *England*: besides the small Sum that can be raised by it is not worth mentioning.

An ESSAY, &c.

ALL Men pretend the Licentiousness of the Press to be a publick Grievance, but it is much easier to say it is so, than to prove it, or prescribe a proper Remedy ; nor is it the easiest Grievance to Cure.

To put a general stop to publick Printing, would be a check to Learning, a Prohibition of Knowledge, and make Instruction Contraband : And as Printing has been own'd to be the most useful Invention ever found out, in order to polish the Learned World, make men Polite, and encrease the Knowledge of Letters, and thereby all useful Arts and Sciences ; so the high Perfection of Human Knowledge must be at a stand, Improvements stop, and the Knowledge of Letters decay in the Kingdom, if a general Interruption should be put to the Press.

To Restrain the Licentious Extravagance of Authors therefore, and bring the Press under Regulations, is the Case before us, and this is for that Reason call'd, *An Essay on the Regulation of the Press.*

'Twould be endless to examine the Liberty taken by the Men of Wit in the World, the loose they give themselves in Print, at Religion, at Government, at Scandal ; the prodigious looseness of the Pen, in broaching new Opinions in Religion, as well as in Politicks, are real Scandals to the Nation, and well deserve a Regulation.

No Nation in the Christian World, but ours, would have suffered such Books as *Asgill* upon Death; *Coward* against the Immortality of the Soul; — on Polygamy; — against the Trinity; *B* — *t's* Theory; and abundance more tending to Atheism, Heresie, and Irreligion, without a publick Censure, nor should the Authors have gone without Censure and Punishment, in any place in *Europe*, but here.

On these accounts, I cannot but agree that a Regulation, or due Restraint of the Press, is a good work. But the next and most material Enquiry is, how shall it be obtain'd?

By a License Office, says a Messenger of the Press, that I may be employ'd to make work in the Town, as has been done in the days of yore.

That this is the hopes of a forward Party upon that head, is very plain to make out, but I shall avoid charging any Body, and only proceed to examine what are the proper Consequences of a License to the Press.

First, It makes the Press a slave to a Party; let it be which Party it will, I meddle not with that; but whatever Party of Men obtain the Reins of Management, and have power to name the Person who shall License the Press, that Party of Men have the whole power of keeping the World in Ignorance, in all matters relating to Religion or Policy, since the Writers of that Party shall have full liberty to impose their Notions upon the World, and if any Man offers to reply, the Licenser shall refuse the Copy.

This has been accounted Arbitrary, and not the least Grievance in former Reigns; for indeed an absolute submitting the Press to the will of a Licenser, is bringing the whole Trade of Books, and the whole Body of Learning, under the Arbitrary Power of Mercenary Men.

The

The Labours of the most capable Scholar, the Elaborate Works of the most exquisite Artist, the most Practical Discourse on the Divineſt Subject, Differtations and Tranſactions in all Sciences ſhall fall to the Ground, and the Student loſe his Years of Labour, and the World the Advantage of his Learning and Parts, unleſs a ſum of Money can be rais'd to bribe a Mercenary Licenſer, and a Hackney Meſſenger.

'T would be endleſs to reckon up the many Volumes on all needful Subjects, which were abſolutely rejected in the days of the Preſs's Reſtriction, when the moſt Orthodox Divinity was ſuppreſs'd, becauſe the Man was not approv'd that wrote it, and a Book was Damn'd for the Author, not the Author for the Book.

This was a branch of Arbitrary Power in the Government; for in Rightful Governments they do not Tyrannize themſelves, but if the Officers are allow'd to impoſe upon them, Under-Spur-leathers are always the Tyrants; a Government regulated by Laws, and Govern'd according to ſuch Regulations, never willingly put it into the power of any Inferiour Officer to Tyrannize over his fellow Subjects.

I obſerve there are ſorts of people who are willing to promote a general Liſenſe, and very ſtudious to defend it; but 'tis plain they are ſuch as promote Principles in Argument, which they can but very ſorriſly defend; and flattering themſelves, from what Grounds I believe they themſelves hardly know; that they may obtain a Licenſer to their Advantage, they ſuppoſe from thence a liberty to obtrude their prepoſterous Notions upon the World, and by favour of a Law and an Arbitrary Licenſer, partial to their own Factions, ſuppreſs the poſſibility of a reply.

Theſe people are in the right to deſire ſuch a thing, as a Licenſer; for falſe and deſigning Reaſoning, requires.

quires the support of Power to defend it from the invincible force of Truth and Demonstration.

But methinks they should be able to see that the present Government is not so suited to those Principles, as that they should expect so Arbitrary and unjustifiable an Office should be erected, after so many Years being laid aside.

The People of *England* do not believe the Parliament will make a Law to abridge them of that Liberty they should protect, for tho' it were more true than it is, that the Exorbitances of the Press ought to be restrain'd, yet I cannot see how the supervising, and passing all the Works of the Learned part of the World by one or a few Men, and giving them an absolute Negative on the Press, can possibly be reconcil'd to the liberty of the *English Nation*.

Laws are often made against Facts not in themselves unlawful, but as Convenience and Reason of State requires, and Circumstances may make a thing unfit to be allow'd in a Country, which would otherwise be no Crime; but in these Cases such Laws are enforc'd by a Penalty, and he that will suffer the Penalty, is always at Liberty to commit the Crime.

But in this case a Man is abridg'd of his Liberty, and must not do this or that, whether it Transgresses the Law or no. For Example, a person having Writ a Book, brings it to one or other Licenser, the Law is not express that such a Book shall not appear in the World, there is no Crime committed, but the Book shall be Damn'd in its Womb, not because any thing in it is offensive to the Government, Irreligious, Blasphemous, or any other way Criminal, not because 'tis a Book unfit to appear, but because Mr. *Licenser* does not please to like it.

I know no Nation in the World, whose Govern-
ment

ment is not perfectly Despotick, that ever makes preventive Laws, 'tis enough to make Laws to punish Crimes when they are committed, and not to put it in the power of any single Man, on pretence of preventing Offences to commit worse.

Even the Laws against Theft and Murther, do not say they shall not commit the Crime, but if they do, they shall be so and so punish'd. 'Tis for the Commands of God to say, *Thou shalt not do this or that, Kill, Steal, commit Adultery*, and the like; but Man can only say, if any Man shall wilfully do this, or that, commit this or that Crime, he shall suffer such or such Pains, and Penalties; and some are of opinion, all men have a Native right, *as to Human Liberty*, to commit any Fact, if they submit to the penalty which the Law inflicts; for as to its being a sin against God, the Laws have nothing to say to that, and as to a sin against Civil Government, there can be no such thing as a Crime till the Fact is committed, and therefore to anticipate the Man by Laws, before the Crime, is to abridge him of his Liberty without a Crime, and so make a Punishment without a Transgression, which is illegal in its own Nature, and Arbitrary in the most intense degree.

It might not be improper here to Examine what particular Inconveniences attend such a Law in our present Case, and upon what just Grounds I except against.

1. I object against it as the first step to restore Arbitrary Power in this Nation, and the worst way of restoring it, *viz.* by a Law. For to go back again to that which we once complain'd of as Arbitrary, is a tacit acknowledging the former Complaint to be groundless, and giving us cause to think that there's more steps of that Nature to be introduc'd.

'Tis ill making Precedents in cases so dangerous, where the

the Liberty of a Nation is concern'd; and I cannot doubt but our wise Legislators will consider what the Consequences of yielding in the least point of the Subjects Priviledges are, and we have always found them very tender of the least punctilio's of that great Fundamental, the Peoples Liberty. 'Tis needless to quote Cases, the general practice of the House of Commons, ever since the liberty of the Subject was to secure the *English* freedom, and carefully to watch against all Encroachments of any sort, either from without or from any Parties among themselves.

2. 'Tis a Foundation of Frauds, Briberies, and all the ill practices possible; the absolute conduct of so considerable an Article, being committed to the Breast of a few Men, every part of their proceedings are Arbitrary and Unreasonable: Nay, even when he passes a Book that ought to be pass'd, yet 'tis Arbitrary in him, because he passes it not because it ought so to be pass'd, but because he has receiv'd some Perquisite, Gratuity, or other Argument to prevail upon him to do it.

Take this Licenser without a Fee, and fancy an Author brings a Copy to him, suppose of Divinity, and where is the Book against which he can find no excuse, tho' Penn'd with never so much caution? here it reflects upon the Church, there upon the Government; this seems to look askint on such an Article of the Church of *England*, that at too much a Ceremony in the Liturgy and Rubrick, and he cannot allow it to be Publish'd; but send him the next morning two or three *Guineas*, and you have the *Imprimatur* at first word. Suppose it be a Book of Politicks, then this Sentence is a reflection on this great Man, that on another, this may signify the Parliament, that the King or Queen, but still the *Guineas* sets it all to right again, the Gold makes the Book Orthodox and Loyal, and private Constructive Objections vanish in the Mist raised before his Eyes by the Money

Then

Then suppose this or that Licenſer, a Party-Man, that is, One put in, and upheld by a Party; ſuppoſe him of any Party, which you pleaſe, and a Man of the oppoſite Kidney, brings him a Book, he views the Character of the Man, O, ſays he, *I know the Author, he is a damn'd Whig, or a rank Jacobite, I'll Liſenſe none of his Writings*; here is Bribery on one Hand, partiality to Parties on the other; but get a Man of his own Kidney to own the very ſame Book, and as he refus'd it without opening before, he is as eaſie to paſs it now, not for the Good or Ill in the Book, but on both Hands for the Character of the Author.

There is another Engine of Fraud comes in to make up this Complication of Frauds, and ill Practices, and that is the Meſſenger of the Preſs, and this ſerves for the Receiver, while the other is the Th---f, and he takes the Fees, and the Licenſer does the Work, and ſo caſting up together they bring all to an Account of Profit and Loſs. This is the Broker of the Preſs, the Stock-Jobber of the Liſenſe-Office; he Talks with you, and Treats with any Body to get a Book Liſenſed, and Rates his Fees as he finds the Perſon more or leſs Obnoxious to his Maſter, or his Party.

This is a New Mouſe-Trap, and he that will come into the Preſs muſt expect to be catch'd in it, and then in a little Time all the force of the Law, ſo far as deſign'd againſt the Exorbitance of the Pen is Evaded and Eluded, all revolves in the Bribery and Villainy of Officers and Liſenſers, the Law looks like a Phantome of the Brain, made for one Man in an Age to raiſe a Fortune by, and he muſt turn Round to perform it.

B

Theſe

These Things have often been consider'd in Parliament, and have been the true Reasons why our Wise Representatives, tho' willing enough to Restrain any undue Liberty, yet have always avoided this Pernitious Remedy, as a thing of much worse Consequence to the Constitution and Privileges of *Englishmen*, than the Licentiousness of the Press can be to the Government.

To Cure the ill Use of Liberty, with a Deprivation of Liberty, is like cutting off the Leg to cure the Gout in the Toe, like expelling Poison with too Rank a Poison, where both may struggle which Poison shall prevail, but which soever prevails, the Patient suffers.

If the Exorbitance of some few People in Printing Seditious and Dangerous Books, must Abridge all the Men of Learning in the Nation of their Liberty in Printing, what after exceeding toil and unwearied Pains they are willing to Communicate to Posterity, then who will Study, who will breed up their Children to Letters, when all the Fruits of their Labours are liable to the Blast of the Arbitrary Breath of Mercenary Men.

By such a Law, a Fellow of no Letters, of Knowledge too little to fit him for a Ballad-Singer, shall be Capable of Tyrannizing over the whole World of Learning, and no Book can see the Light without his leave, when after a Man has wrote enough to have all the World acknowledge him, and such a Work, which in some Countries he would have sufficient Gratification for, here he shall not bestow it on the World, without putting himself to the Charge of Bribing the Licenser, and so cannot give them his Labour, but he must give them his Money too.

In this very thing the King of *France* out does all the Princes of *Europe*, where such Encouragement is given to Learning, that all useful Books in the World now speak *French*, and a Man may be an Universal Schollar, read *Virgil*, *Horace*, *Ovid*, and all the Antient Poets ; *Cicero*, *Plato*, *Epictetus*, *Aristotle*, and all the Antient Philosophers ; *St. Athanasius*, *St. Augustine*, and all the Primitive Fathers ; *Plutarch*, *Livy*, and all the Antient Historians, and yet neither understand a Word of *Greek* or *Latin*, and pray let us Examine if ever the Press has been Restrain'd to the Absolute Power of a Licenser or Reviser, on the contrary all the Liberty and Encouragement imaginable has been given to the Press, all the Abbies, and publick Libraries in the Kingdom are oblig'd to take One, and when any Author has publish'd an Extraordinary Piece, the King himself has thought fit to reward him with a Magnificence, peculiar to the Pride and State of the *French* Court.

But this Liberty has been the Life of Learning, and ever since Cardinal *Richlieu* Erected the Royal Academy, no Nation in the World ever flourish'd in Learning like them.

The *English* Nation has always carried a figure equal to their Neighbours, as to all sorts of Learning, and in some very much superior, and tho' without all those Encouragements, have not yet sunk their Character that way. But we cannot say that Learning is grown to such a height that it needs a Check, that it wants a Tyrant of the Press to govern it : Knowledge is much Improv'd, 'tis confess'd, but the World is not so over-run with Letters, that it should be Tax'd as a Vice, and Laws made to Suppress the little Degrees of it, that are attain'd to.

What those Gentlemen propose to themselves who are so forward to procure, or at least so eagerly plead for this Padlock to the Press, I cannot imagine, unless it be that they have some grounds to hope they shall keep the Key.

And what can the design of that Power be? If it be that they would have the Advantage to Print what they please, and that the adverse Party should not have the liberty of the Press to Reply, is a sign the Cause they Embark in is not to be Defended, and will not bear an Answer, and if it be that that they would have no Writing at all, but such points as they are doubtful in, 'tis an Unquestionable Argument that their Cause won't bear Canvassing, and that the less 'tis Examined into, the better for them.

Some People have an Arrogance peculiar to themselves, and can venture things into the World upon the Reputation of a bold Expression, presuming, no Man will venture Examination after the positive Assertion of their Pen. If these Gentlemen are so full of Assurance, *Anglicè*, Impudence, as to affirm things without Ground, when other Men as well Read as themselves, are at their Elbows to Confute them, to Examine their Authorities and reprove them when they Act without Authority; what work would such Men as these make in the World with their Cause, if this Padlock of the Press was set on by the Laws, and they were to keep the Key, that is, in short, if they had a full License to vent their Notions, and the Law should place a Sentinel of their own at the Door of the Press, that no Man but he that had the Word should come there.

We should have more *Wise Nations* quoted upon us for things no Nation ever did, and Precedents brought in by
Whole

Wholesale, without any other Authority than the *Impri-matur* of the Party.

New and Old Association-Men might then cry out of Rebellion in *Scotland*, from the *Presbyterian*, and make the World believe the *Cameronians* were up in Arms there to restore *Episcopacy*. Boys may beat Men if their Hands were Ty'd; if the Hands of a Party are ever Ty'd up by a Law of Licensing, 'tis not then who talks Sense, or Matter of Fact, nor who has the best of the Argument, nor who can say most to the purpose, but who shall be Licensed to speak what he has to say, and who not, who shall Talk, and who shall hold his Tongue.

This I take to be the true state of the Case, and if it be so, I leave it to any body to judge, whether a *License of the Press* can be consistent either with the Encouragement due to Learning, the Liberty of this Nation, the Reason of the thing, or the Reputation of any Party who desire it.

It remains to Enquire,

First, Is it then fit the Licentiousness of the Press should be Unrestrain'd? And Secondly, How shall it be done?

To the First I reply. Licentiousness of all sorts ought to be Restrain'd, whether of the Tongue, the Pen, the Press, or any thing else, and it were well if all sorts of Licentiousness were as easy to Govern as this; but to Regulate this Evil by an Evil ten times more pernicious, is doing us no service at all.

'Tis

'Tis apparent the Injury done to the whole Nation, by severely Punishing small things, and letting more substantial Grievances alone, is what there has been Cause to Complain of.

There are Parties in all our Justice and Crimes have, or have not been Punish'd, as *Parties* and *Sides* have Govern'd. But I am not going to write a Satyr on Government, several has paid Dear enough for that ; to give me Notice, what is to be expected from such a Liberty ; as 'tis in all the World so it has too much been here, where there are *Powers* and *Parties* always struggling, there must be a Bias of Justice as this or that *Side* prevails.

But 'tis pitty the Press should come into a Party-strife: This is like two Parties going to War, and one depriving the other of all their Powder and Shot. Ammunition stands always Neuter, or rather, *Jack a both Sides*, every body has it, and then they get the Victory who have most Courage to use it, and Conduct to manage it.

And thus 'tis in the Press, with submission to Powers, this I think is a just Consequence from Reason, that since this Nation is unhappily Divided into Parties, every Side ought to have an equal Advantage in the use of the Press, and this can never be in Case of Licensing ; for whatsoever Party assumes the Power of placing this Paper Magistrate, will, in effect, have an Exclusive Power over the Press, to give their Friends a full liberty of *Affirming*, and to refuse the other Side the liberty of *Replying*.

Now, as our Legislation cannot be said to be of any Party, because they are Whole ; so they cannot make a Law

Law which can be equal to the Whole, while it gives the Power to any one Party,

It cannot be prov'd, that any one Party has more Right, as a Party, to Publish any thing than another, and therefore cannot in Justice have more liberty given them to do it; For no Man can justly Demand an Exclusive Power, where he had no precedent Right.

Besides, 'tis a Scandal both to the Merit of a Cause, and the Wit of the Managers, that any Party shou'd fly to the Law to suppress his Adversary's Pen. If two Men fall Out, and one having struck the other, the Person who receiv'd the Blow instead of Fighting him goes to Law with him for the Assault. 'Tis a natural Consequence for all Men to believe such a Man was afraid to Fight; either he was a Coward in his Nature, or he thought himself over-match'd, and his Enemy would be too hard for him.

So where a Party flies to the Engine of the Law to prevent their Opponent's appearing in Print, it looks like a Confession that they would have the Advantage, if the Liberty was not Restrain'd by the Law.

But then to have a Law which should be so Circumstanc'd, as that one Party shall Write and Print, and the other shall not, this has a further Scandal in it, it not only Confesses superiority in the Enemy Suppressor, but seems to have something base in the Party, like getting two Men to hold a Man while I Beat him.

The Grand Question then seems thus,

You own the Liberty of the Press ought to be restrain'd, but you are of the Opinion a Licence is Arbitrary.

ry and Unequal. How then would you have the end Answer'd?

'Tis not for me to direct the Legislative Authority, nor do these Sheets pretend to it, but to me the properest Methods seem to be such as follow.

1. To make an Act that no Man shall, by Writing or by Printing, Argue, Dispute, Reflect upon, or pretend to Vindicate such and such Points, Persons, Bodies, Members, &c. of the State of the Church, or of any other Matter or Thing as the Law shall mention, and they will be such as the Law-makers see proper to insert.

2. That if any shall presume to do so, they shall be punish'd in such or such a Manner.

By the first, all Men will know when they Transgress, which at present, they do not; for as the Case now stands, 'tis in the Breast of the Courts of Justice to make any Book a Scandalous and Seditious Libel, and nothing is more ridiculous than the Letter of an Indictment in such Cases, and the Jury being accounted only Judges of Evidence, Judges of Fact, and not of the Nature of it, the Judges are thereby Unlimited.

In the Case of Mr. Delaun, who was Indicted at the Old Bailey, for Writing a Book, call'd, *A Plea for the Nonconformists*; says the Indictment, *and the said Delaun did then, and there by Force and Arms write the aforesaid Scandalous and Seditious Book, against the Peace of our Sovereign Lord the King, his Crown and Dignity*, which are the actual Words in most Indictments of that nature:

All these Evils would be Obviated, and Men might know when they Transgress, and when they do not.

Laws,

Laws in their Original Design are not made to draw Men into Crimes, but to prevent Crimes; *Laws are Buys* set upon dangerous Places under Water, to warn Mankind, that such Sands or Rocks are there, and the Language of them is, *Come here at your Peril.*

The Crime of an Author is not known; and I think verily no Book can be wrote so warily, but that if the Author be brought on his Tryal, it shall be easy for a cunning Lawyer, ay for a Lawyer of no great Cunning, to put an *Innuendo* upon his Meaning, and make some Part of it Criminal. Thus it was in the Case of *Baxter's Comment upon the New Testament*; *Algernon Sidney's Answer to Sir Robert Filmer*; *De Laun's Plea for the Nonconformists*; *Anderton's two Books*; and so it may be with this Book, or the best in the World.

Now since there are Dangers thus conceal'd in the Law, and no Man can tell when he offends, 'twould be a wholesome Piece of Justice to all the Nation, to place a Buoy on the Rock, and whoever splits on it afterwards would deserve no pity.

Such a Law would be a sufficient Restraint to the Exorbitance of the Press, for then the Crime would be plain, and Men would be afraid of committing it. Whereas the present uncertainty of the Crime seems to be the greatest Occasion of the Crime, for Men are apt to be bold in a Thing which they cannot find expressly Condemn'd by the Letter of the Law.

Secondly, As the Crime may be stated, so may the Punishment, and then no Man can be at the Mercy of arbitrary Men; no *Sidneys* will be found to have Sentence revers'd, and Attainders taken off; no *De Launs* die in Prison under Exorbitant Fines; no *post Factum's*, no Complaint can be made by the Person offending, because they know what they were to trust to.

C

And

And above all, the End of restraining the Press would be obtain'd by it ; for when Men know both the Crime and the Punishment, they would be much more wary of the one for fear of the other.

I humbly conceive, the uncertainty of both at present, is the real, if not the only Ground of the Licentiousness of the Press. When I am told the present Liberty of the Press is a Grievance, I must say, the reason is plain, 'tis because there is a Liberty, and no Law to ascertain the Fact. But let the Law adjust the Crime, and tie it to the Penalty, that Authors may know what to trust to ; there needs no Licenser to pick Men's Pockets, permit Crimes when he is paid for them, and refuse useful and valuable Books if he is not fee'd.

But here remains a Question unanswer'd, that in other Cases is not usual. There are many ways to commit this Crime, and lie conceal'd ; the Crime may be committed, and the Malefactor hard to be found, and therefore the Licensing the Press was thought necessary to prevent the Fact, because when committed, the Offender is not easily brought to Justice.

This is easily answered, and the Parliament has thought fit, in two Cases, to make a Precedent that exactly reaches the Case, and they are, *first*, in the Case of buying stolen Goods ; and the other is, in putting off, or exchanging counterfeit Money ; both which, tho' Accessories to the Crime, are now made equally Criminal with the Principal, if knowingly done.

If in the Case of the Press, a Law be made to make the last Seller the Author, unless the Name of Author, Printer, or Bookseller, be affix'd to the Book, then no Book can be published, but there will be some body found to answer for it. Whoever puts a false Name, is forfeit..... &c.

Nor

Nor can this be thought hard upon the Seller of the Book, because as he knows the Consequence, no Book-seller will be so foolish as to sell any Book that has not the Name of some Printer, Bookseller, or Author affix'd to the Title ; and so this Law will answer two Ends together ; be a means to prevent the Crime, and fix the Offender if it be committed.

If the Name of the Author, or of the Printer, or of the Bookseller, for whom it is printed, be affix'd, every Man is safe that sells a Book ; but if not, then no Man will sell it, but he that hath some private Reason for propagating what the Book treats of, and such a Man has some Title to pass for the Author.

I place the Excellency of a Law very much, as before, in the Power and Efficacy it has to prevent the Crime ; and the Justice of that Law can never be plainer, than when the Fact is ascertain'd, the Penalty settled, and the Criminal describ'd : No Man can then be Guilty, but he that is wilfully and knowingly so, and whoever is so, *let him suffer*, no Man will be concern'd for him.

All the Excuse that ever I could meet with for a Licenſer, was built upon the Difficulty of discovering the true Author of a Book, and the Difficulty being such, that no Laws could easily be made effectual, to fix the Writer of any thing, they found room for the Stratagem of a Licenſer. I call it an Excuse for it, because 'tis plain, the Licenſer was not found out as a Remedy for the Evil : But the Design of a Licenſer being first resolv'd on, the pretended Difficulty was made a Handle to introduce the new Engine into the World, and place this Monarch of the Press, as a Tyrant to exercise his absolute Authority over the World of Letters, and to suppress one Mischief by another ;

But leaving the Press in the full Enjoyment of all its just Liberties, and answer all these Ends, while 'tis yet sent'd about :

(100)

about with due Restriction of Laws, every Man may have a full Freedom of promoting the Extent of Learning, exercising his Parts, defending his Arguments, and answering his Adversary, and yet at the same time will know how far he may go with safety, and when he transgresses: If any Man then gives offence, he knows it, and what he must expect; if any Man does thus offend, the Law knows the Offender, and how to punish him: All things would run in the open free Course of Laws. Criminals and Laws, Offences and Punishment are due Opposites, and ought always to stand in view of one another. If the Punishment or the Law is conceal'd from the Offender, he is trapann'd into the Crime to his Destruction, when he knows nothing of the Matter, and the Law is made a Gin or Snare to hook him into Punishment, which is contrary to the Nature of Laws, and the Practice of all just Governments.

A Law therefore to settle what an Author may or may not do, to bring the Offences of the Pen to a Regulation, and then to annex the Punishment to the Crime, would bring all this Matter to a Square.

Authors would be known as soon as the Book, because this Law would oblige the Printer or Bookseller to place the Author's Name in the Title, or himself.

Nor is it the small Advantage of this Law, to have the Punishment of Authors adjusted; for I know nothing in which our Laws have been executed with a greater Irregularity, no Crime has been punish'd with such improper Punishments, such arbitrary Latitude, or such inconsistent Variety. In other Cases we have Crimes and Punishments link'd together; if a Man robs a House, counterfeits the Coin, or kills a Man, he knows what he has to trust to, but Authors have never known their Punishment: We have had the very same Crime punish'd with trifling Fines of Twenty Shillings, and exorbitant

exorbitant Fines of a Thousand Marks, and yet the Twenty-Shilling-Man hath the greatest Guilt ; writing of a Book has been punish'd with *Fines, Whippings, Pillories, Imprisonment for Life, Halters and Axes* : How 'tis possible the Guilt of the Pen can extend to merit all these several Penalties, is a thing I never met with a Lawyer yet that could resolve.

There must be something else than Law in the Case ; when I shall commit an Offence, and be fin'd 20 Mark, or perhaps less ; another, for the same Crime, shall not be prosecuted at all ; another hang'd or beheaded.

All the World cannot shew me a Crime punished by such unequal Variety, where the Crime is the same in Kind, and can only differ in Circumstances ; nor is it possible those Circumstances can have so much Variety, such unusual Distance in their Nature, as there has been in the Punishments ; but all this comes from the Law having left the Punishment unsettled, and plac'd it in the unlimited Judgments of Men.

This Law would also put a Stop to a certain sort of Thieving which is now in full practice in *England*, and which no Law extends to punish, *viz.* some Printers and Booksellers printing Copies none of their own.

This is really a most injurious piece of Violence, and a Grievance to all Mankind ; for it not only robs their Neighbour of their just Right, but it robs Men of the due Reward of Industry, the Prize of Learning, and the Benefit of their Studies ; in the next Place, it robs the Reader, by printing Copies of other Men uncorrect and imperfect, making surreptitious and spurious Collections, and innumerable Errors, by which the Design of the Author is often inverted, conceal'd, or destroy'd, and the Information the World would reap by a curious and well studied Discourse, is dwindled into Confusion and Nonsense.

D

'Twere

Twere endless to instance in the Mischiefs which have been done of this kind. An Author prints a Book, whether on a Civil or Religious Subject, Philosophy, History, or any Subject, if it be a large Volume, it shall be immediately *abridg'd* by some mercenary Book-seller, employing a Hackney-writer, who shall give such a contrary Turn to the Sense, such a false Idea of the Design, and so huddle Matters of the greatest Consequence together in abrupt Generals, that no greater Wrong can be done to the Subject; thus the sale of a Volume of twenty Shillings is spoil'd, by perswading People that the Substance of the Book is contain'd in the Summary of 4 s. price, the Undertaker is ruin'd, the Reader impos'd upon, and the Author's perhaps 20 Years Labour lost and undervalued: I refer my Reader, for the Truth of this, to the several Abridgments of the *Turkish History*, *Josephus*, *Baxter's Life*, and the like.

I think in Justice, no Man has a Right to make any Abridgment of a Book, but the Proprietor of the Book; and I am sure no Man can be so well-qualified for the doing it, as the Author, if alive, because no Man can be capable of knowing the true Sense of the Design, or of giving it a due Turn like him that compos'd it.

This is the first Sort of the Press-Piracy, the next is pirating Books in smaller Print, and meaner Paper, in order to sell them lower than the first Impression. Thus as soon as a Book is publish'd by the Author, a raskally Fellow buys it, and immediately falls to work upon it, and if it was a Book of a Crown, he will contract it so as to sell it for two Shillings, a Book of three Shillings for one Shilling, a Pamphlet of a Shilling, for 2 d. a six-penny Book in a penny Sheet, and the like. This is down-right robbing on the High-way, or cutting a Purse, (were they not afraid of their Deserts) is a
Ruin

Ruin to Trade, a Discouragement to Learning; and the Shame of a well mannag'd Government.

The Law we are upon, effectually suppresses this most villainous Practice, for every Author being oblig'd to set his Name to the Book he writes, has, by this Law, an undoubted exclusive Right to the Property of it. The Clause in the Law is a Patent to the Author, and settles the Propriety of the Work wholly in himself, or in such to whom he shall assign it; and 'tis reasonable it should be so: For if an Author has not the right of a Book, after he has made it; and the benefit be not his own, and the Law will not protect him in that Benefit, 'twould be very hard the Law should pretend to punish him for it.

'Twould be unaccountably severe, to make a Man answerable for the Miscarriages of a thing which he shall not reap the benefit of if well perform'd; there is no Law so much wanting in the Nation, relating to Trade and Civil Property, as this, nor is there a greater Abuse in any Civil Employment, than the printing of other Mens Copies, every jot as unjust as lying with their Wives, and breaking-up their Houses.

This Grievance a Licenser will never remedy; nay these People who act them in secret, and without Principles, are out of the reach of a Licenser, for they value not the Law, are *unaccountable themselves*, and have their Hawkers and Mannagers under them.

But if an Author has a Right of Action given him by Law, not against him only who shall print his Copy, but against the Publisher of it also; and this Law being made full and express, the Evil will die, for no body will dare to sell the Book, when the villainous Pirate has finish'd the Impression.

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It has been objected against such a Regulation of the Press, That it will fill the Town with scandalous Lampoons and *Pasquinadoes*, which will be handed about in manuscript, and do as much harm as Printing. To this I must answer, A Restraint upon the Press will do so, and always did; and I appeal to any Man's Judgment, to shew me a time when ever the Town swarm'd with things of that Nature, as it did in King *Charles* the Second's Time, King *James*'s, and some part of King *William*'s, when the Press was under the Government of a Licensor, and therefore this Law can no way be more instrumental to it than that was, nor I think will not be so much.

I can see no further Objection against my Opinion, and shall be very willing to consider it when I meet with it; in the mean time, if any one can propose a better Method, more agreeable to the Justice of the Nation, and more effectual to all the Ends that are needful to be consider'd, I hope he will not be discourag'd by this Essay, from making the Proposal.

F I N I S.



Seet. 544.

En mesm le manner est, lou un ad un rent charge hoys de certain terre, & il granta al tenant de la tert le Rent-charge, &c. & la cause est, pur ceo que appiert, per les parols del grant, que le volunt le donoz est, que le tenant avera le rent, &c. & entant que il ne puit aver ne perceiver aucun rent hoys de son terre demesme, pur ceo le fait serra intendue & pris pur l' plus advantage & abaile pur le Tenant que puit estre pris, & ceo est per voy de extinguishment.

In the same Manner it is, where one hath a Rent-charge out of certain Land, and he grant to the Tenant of the Land the Rent-charge, &c. And the Reason is, for that it appeareth by the Words of the Grant, That the Will of the Donor is, That the Tenant shall have the Rent, &c. and inasmuch as he cannot have or perceive any Rent out of his own Land, therefore the Deed shall be intended and taken for the most Advantage and Avail for the Tenant, that it may be taken, and this is by Way of Extinguishment.

BUT if the Grantee of the Rent-charge granteth it to the Tenant of the Land and a Stranger, it shall be extinguished but for the Moiety: And so it is of a Seigniorie.

Seet. 545.

JTem, si jeo lessa Terre a un home per terme dans, & puis jeo confirma sō estate sans plus parols mitter en le fait, per cel il nad plus greinder estate q p term dans, sicome il avoit adevant.

Also, if I let Land to a Man for Term of Years, and after I confirm his Estate, without putting more Words in the Deed, by this he hath no greater Estate than for Term of Years, as he had before.

Seet. 546.

MES si jeo releffa a luy mon droit que jeo aye en le terre sans plus parols mitter en le fait, il ad estate de frankement. Mnt poyes entend, mō firs, divers grands diversities penter Releases & Confirmations.

BUT if I release to him all my Right which I have in the Land, without putting more Words in the Deed, he hath an Estate of Freehold. So thou mayst understand (my Son) divers great Diversities between Releases and Confirmations.

In these two Sections is the seventh Case, wherein a Release and Confirmation do differ.